IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

WP(C).No. 27404 of 2007(K)

AGAINST THE ORDER IN EP 263/2006 IN
OS.668/2003 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

K.N.MANOHARAN,
S/O.KARANAMKOTTU NARAYANAN,
KAKKASERRY DESOM, ELAVALLY VILLAGE,
CHAVAKKAD TALUK, THRISSUR DISTRICT.

BY ADV. SRI.JIJO PAUL

RESPONDENT:

NEW MILLENNIUM KURIES (P) LTD.,
MANNADIYAR LANE, THRISSUR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.27404 of 2007

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Dated this the 14th day of September, 2007.

JUDGMENT

This Writ Petition is filed challenging the order of the learned Subordinate Judge passed on 31.1.2007 after a period of nine months. By Ext.P3 order, the learned Subordinate Judge directed to incorporate objection raised by the judgment debtor in the proclamation for sale. The court also directed the judgment debtor to wipe off all the liability by sale of a portion of the property. Thereafter, the court posted the case for sale on 26.3.2007.

2. I am informed by the learned counsel for the writ petitioner that the sale is not over and it is posted on 17.9.2007. The revision petitioner harps upon the point that the court below has committed a jurisdictional error in not exercising its power for the reason that sale of 2 ½ cents of property according to the judgment debtor, is sufficient for the discharge of the decree debt. I may state that it was the duty cast upon the judgment

debtor also to raise a specific plea in the counter statement. A vague counter is filed and one cannot find out from the counter that he has got such a specific contention. But I am not on the technical aspect of the matter for the reason that time and again the Apex Court as well as this Court had taken the view that only the necessary portion of the property need be sold for realisation of the decree debt; so that undue hardships can be averted to the judgment debtor.

3. Therefore I dispose of the Writ Petition directing the court below to defer the sale and conduct an enquiry after hearing both sides prima facie to find out whether a portion of the sale of the property is sufficient to discharge the decree debt and if so, pass orders accordingly and direct the decree holder to take emergent steps in that regard and proceed with the sale in accordance with law. The court shall not unnecessarily grant adjournments to the judgment debtor and dispose of the case.

M.N.Krishnan,
Judge.

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